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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,629	07/25/2003	Steven J. Jackowski	006267.00002	9627

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EXAMINER	
HAMILTON, LALITA M	
ART UNIT	**PAPER NUMBER**
3691	

MAIL DATE	DELIVERY MODE
12/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/626,629	JACKOWSKI ET AL.	
	Examiner	Art Unit	
	Lalita M. Hamilton	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3,5-21 and 23-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3, 5-21, and 23-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination (RCE)

The RCE filed on November 3, 2008 has been processed. A non-final follows.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 3, 5-21, and d23-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 3, 5-21, and 23-28 recite a method. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr,* 450 U.S. 175, 184 (1981); *Parker* v. *Flook,* 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson,* 409 U.S. *63,* 70 (1972); *Cochrane* v. *Deener,* 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5-21, and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiel (2003/0027549) in view of Cromer (7,113,497).

Kiel discloses the invention substantially as claimed; however, Kiel does not disclose assigning a subscriber a second downstream bandwidth which allows downstream data flow at a level more restrictive than the first downstream bandwidth when the downstream balance of the account of a subscriber of the network drops below a defined level and for each account, crediting the balance of the respective account on an intermittent basis; decreasing the amount of bandwidth allocated to a particular user in response to a high rate of usage and increasing the amount of bandwidth allocated to a particular user in response to a low rate of usage and restoring a user to a default bandwidth in response to passage of time without usage; dynamically adjusting the amount of available bandwidth to each of the users by allowing data to

flow at a level less than a first level of bandwidth allocated to a particular user by lowering the amount of throughput in response to a high rate of usage and allowing data to flow at the first level in response to a low rate of usage after a passage of time with a low rate of usage; dynamically adjusting the amount of available bandwidth to each of the users by increasing the amount of bandwidth allocated to a particular user in response to a high rate of usage and restoring a user to a default bandwidth in response to passage of time without usage; dynamically adjusting the amount of available bandwidth to each of the users by allowing data to flow at a level higher than a first level of bandwidth allocated to a particular user by raising the amount of throughput in response to a high rate of usage and allowing data to flow at the first level in response to a low rate of usage after a passage of time with a low rate of usage. Cromer teaches bandwidth management comprising restricting bandwidth (col.8, lines 11-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Cromer within Kiel for the motivation of further regulating wireless consumption.

Response to Arguments

Applicant's arguments filed November 3, 2008 have been fully considered but they are not persuasive. The Applicant argues that neither reference discloses or teaches bandwidth restriction. In response, Cromer teaches restricting bandwidth once a threshold level is reached. Referring back to FIG. 3, the process then proceeds to decision block 304, where a determination is made whether the aggregate bandwidth utilization of a particular client is greater than a preset threshold level. Again, the

threshold levels are driven by policies. In a preferred embodiment, the policy would set the threshold to a fifty percent level if the wireless LAN currently has only one active user. An active client is defined as a client that has utilized bandwidth within the predetermined time interval (i.e. 10 minutes) The policy sets the threshold level to twenty percent when there are less than ten and greater than one active clients on the wireless LAN. The policy sets the threshold level to ten percent when there are less than fifty and greater than ten active clients. Above fifty users, the threshold level is set to five percent. Of course, in alternative preferred embodiments, the thresholds can be policy driven based on other criteria other than a number of users, such as a policy based on geography, for instance. If the determination at step 304 is that the aggregate bandwidth utilization is greater than the threshold level for a given client, the process proceeds to step 306 where a determination is made whether the client that has exceeded the threshold level is on a Restricted List. The Restricted List is a list of client IP addresses for clients that have aggregate bandwidth utilizations that exceed the current threshold level. The Restricted List is stored in the access point and is accessed during step 306. If a determination at step 306 is made that the threshold exceeding client is not on the Restricted List, the process proceeds to step 308, where the threshold-exceeding client is added to the Restricted List stored in the access point. Thereafter, the process returns to step 302 to again calculate the aggregate bandwidth utilization for each active client. If a determination is made at step 306 that the threshold-exceeding client is on the Restricted List, the process returns to step 302. Referring back to decision block 304, if a determination is made that the aggregate

bandwidth utilization is not greater than the threshold level for a particular client, the process proceeds to decision block 310, where a determination is made whether the particular client determined to be not utilizing aggregate bandwidth in excess of the threshold level is on the Restricted List. If the client is not on the Restricted List, the process returns to step 302, where aggregate bandwidth utilization is again calculated. If the particular client was on the Restricted List, but is determined at step 304 to no longer be exceeding the threshold level for its aggregate bandwidth utilization, the process proceeds to step 312, where the client is removed from the Restricted List. step 302 (col.8, lines 11-60).

.*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kalinowski Alexander can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lalita M Hamilton/
Primary Examiner, Art Unit 3691